IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:30.04.2010

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THE HONOURABLE MR. JUSTICE T.RAJA

W.P.Nos.3067 of 2004 and 28920 of 2005

The General Manager,
Tamilnadu State Transport Corporation
(Villupuram  Div. II) Ltd.,
Rangapuram,
Vellore  9.
... Petitioner in
W.P.No.3067/2004
V.Mandhri
... Petitioner in
W.P.No.28920/2005

Vs.

1.The Presiding Officer,
Labour Court,
Vellore.
... Respondents
in both petitions

2.V.Mandiri
... Respondent in
W.P.No.3067/2004
The General Manager,
Tamilnadu State Transport Corporation
(Villupuram  Div. II) Ltd.,
Rangapuram,
Vellore  9.
... Petitioner in
W.P.No.28920/2005

PRAYER IN W.P.No.3067/2004 : Writ Petition filed under Article 226 of Constitution of India praying to issue Writ of Certiorarified Mandamus to call for the records pertaining to the award dated 25.04.2003 made in I.D.No.231 of 2001 on the file of 1st respondent herein and quash the same and pass such further orders.

PRAYER IN W.P.No.28920/2005 : Writ Petition filed under Article 226 of Constitution of India praying to issue Writ of Certiorarified Mandamus to call for the records relating to the award dated 25.04.2003 in I.D.No.231/2001 passed by the 1st respondent in so far as depriving the petitioner 50% of backwages, quash the same and direct the 2nd respondent to pay the petitioner full

backwages for the period of non-employment.

For Petitioner :Mr.V.R.Kamalanathan
in W.P.No.3067/2004
Mr.V.Ajoy Khouse
in W.P.No.28920/2005
For Respondents :Mr.V.Ajoy Khouse for R2
in W.P.No.3067/2004
Mr.V.R.Kamalanathan
in W.P.No.28920/2005

COMMON ORDER
The present writ petition in W.P.No.3067/2004 is directed against the award passed by the Labour Court, Vellore, wherein, the labour court has ordered for reinstatement of service of the 2nd respondent and 50% backwages.
2. Learned counsel appearing for the petitioner submits that the learned labour court, while considering the case of the 2nd respondent herein, has not gone into the aspect of the earlier punishment imposed against the workman/respondent. Therefore, the present writ petition has been filed challenging the correctness of the order passed by the labour court directing the petitioner/transport corporation to pay 50% of the backwages. When the matter was taken up by this Court, learned counsel appearing for the respondent also has brought to the notice of this court, a writ petition filed by the 2nd respondent challenging the award passed by the labour court in respect of non payment of 50% backwages. But, the learned counsel appearing for the 2nd respondent submitted that his client is ready to waive all the backwages from the date of dismissal till the date of reinstatement by the transport corporation. But, however, only for the purpose of getting contributory pension, the case of the petitioner could be considered for the payment of contributory pension and on that basis, prayed for settling the matter once and for all, and therefore, to that effect, he has also filed an affidavit offering to waive his backwages. Since the 2nd respondent himself has come forward to waive the backwages by filing an affidavit by stating that he is willing to waive 10 years of bakcwages from the date of dismissal till the date of reinstatement, the same was accepted by the other side.

3. In fact, 4 charges were levelled against the 2nd respondent, V.Mandhiri, for which, the Labour Court held that charge nos.1, 2 and 4 were proved and on that basis, it was held that the findings of the enquiry officer with regard to these three charges were unsustainable. The only charge, namely, charge no.3 has to be proved by the 1st respondent was that the 2nd respondent failed to fill up invoice for the 10th stage, namely, Pangaanatham stage. Since charge no.3 alone was held to be proved and also being a trivial one, the labour Court had held that imposition of a minor punishment having little financial implication, would be sufficient for the said proved charge and on that basis held that the punishment of dismissal was not warranted and accordingly, set aside the dismissal order by directing the petitioner Corporation to reinstate the 2nd respondent with continuity of service with all other attendant benefits. However, the labour Court thought fit to deprive 50% of the backwages and ordered only for payment of 50% backwages. Aggrieved by the denial of 50% backwages, the 2nd respondent also filed W.P.No.28920/2005 challenging the award passed by the labour Court.

4. During the course of argument, learned counsel appearing for the 2nd respondent/V.Mandiri submits that in order to bring quietus to the matter once for all and also to get peace, filed an affidavit dated 17.04.2010, undertaking to forgo the balance amount towards backwages, except the

amount of Rs.62,500/-, which is lying to the credit of I.D.No.231/2001 along with amount already paid to the 2nd respondent/V.Mandiri towards 17(B) backwages, provided the Corporation is willing to reinstate the 2nd respondent with continuity of service and all other attendant benefits as per the award. The offer made by the 2nd respondent and petitioner in W.P.No.28920/2005 if accepted, the petitioner Corporation will save a substantial amount to the tune of Rs.6,91,000/-, because the wages payable to the 2nd respondent in W.P.No.3067/2004 and writ petitioner in W.P.No.28920/2005 from the date of award upto March'2010 comes to Rs.10,53,000/-. After adjusting Rs.4,27,500/- towards 17(B) wages, the total amount payable to the Conductor/2nd respondent herein as per the award, even if he does not succeed in writ petition, would be Rs.6,25,500/-. On the other hand, if his W.P.No.28920/2005 is allowed, the total amount payable to him after adjusting 17(B) backwages would be Rs.6,91,000/-. In this view of this matter, since V.Mandiri/2nd respondent herein and writ petitioner in W.P.No.28920/2005 has come forward to forgo 10 years backwages, this Court is inclined to modify the award passed by the labour Court to only extent that V.Mandiri is entitled for reinstatement with continuity of service, but without attendant benefits.

5. It is also made clear that the deposit made by the transport corporation before the labour court, shall be allowed to be withdrawn by the transport corporation. It is needless to mention that the 2nd respondent is entitled to have the benefit of continuity of service including all other attendant benefits and contributory pension benefits also. Therefore, the petitioner Corporation shall make all the employer contribution and also make it clear that 17(b) wages already paid and received by the 2nd respondent need not be recovered by the transport corporation. In result, the writ petition in W.P.No.3067/2004 is disposed of. No Costs.

6. In view of the above observation, the writ petition filed by the 2nd respondent in W.P.No.28920/2005 is dismissed. No Costs.

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To

1.The General Manager,
Tamilnadu State Transport Corporation
(Villupuram  Div. II) Ltd.,
Rangapuram,
Vellore  9.

2.The Presiding Officer,
Labour Court,
Vellore